

APPENDIX "D"

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

RE: COMPLAINT OF : EEOC COMPLAINT NO.
WILLIAM MORRIS AND : 170-95-8281X
VICE ADM. E.M. STRAW :
DIRECTOR, DEFENSE : AGENCY CASE NO.
LOGISTICS AGENCY : DM-92-056

TRANSCRIPT OF PROCEEDINGS

BENCH DECISION

BEFORE: JULIE PROCOPIOW TODD
ADMINISTRATIVE JUDGE

DATE: NOVEMBER 7, 1995, 4:00 P.M.

PLACE: DEFENSE DISTRIBUTION REGION
EAST, BUILDING 81
NEW CUMBERLAND,
PENNSYLVANIA

APPEARANCES:

PINSKEY & FOSTER (VIA TELEPHONE)

BY: RALPH B. PINSKEY, ESQUIRE

FOR - COMPLAINANT

DEFENSE DISTRIBUTION REGION EAST
BY JOHN D. FRITZ, ESQUIRE

FOR AGENCY

ALSO PRESENT:

WILLIAM D. MORRIS (VIA TELEPHONE)

SHERRY J. BOWES, RPR
NOTARY PUBLIC

[Because of the length of the Bench Decision (29 pages) in the interest of brevity we have included only the corrective action recommended by the Administrative Judge]

Recommended corrective action: In consideration of the limited finding of discrimination in this case, the agency shall take the following actions: The agency shall take immediate steps to expose the agency officials involved to the current state of the law on employment discrimination, including discrimination based on disability and the goals behind the law requiring equal employment opportunities for all;

The agency shall award the complainant any back pay or interest due and owing the complainant for the period February 27, 2002 through June 8, 1992, such as for missed work.

The agency shall pay to the complainant compensatory damages based on the injuries complainant sustained on April 11, 1992, in failing to reasonably accommodate the complainant for the period February 27, 1992 to April 11, 1992;

The agency shall pay reasonable attorney's fees incurred in the processing of this complaint pursuant to 29 C.F.R. Section 1614.501(e). The attorney shall submit a verified statement of fees to the agency - not to the EEOC, Office of Federal Operations - within 20 calendar days of the receipt of this decision;

And the agency shall accomplish each of the above actions within 30 days of the date this decision becomes final.

Notice: Pursuant to Section 1614.109(g) of part 1614 of the Commission's regulations, the Administrative Judge's recommended decision shall become the final decision of the agency if the agency has not, within 60 days of receipt of the entire record including the hearing transcript, issued a final decision rejecting or modifying the recommended decision.

The agency shall notify the complainant of the final decision in accordance with Section 1614.110, and notify him of his right to appeal to the Commission and the name and address of the agency official upon whom notice of an appeal should be served, notify him of his right to file a civil action in federal district court and the name of the proper defendant in any such lawsuit, and set forth the time limits applicable to appeals and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final agency decision. The purpose of this particular notice is if there's an appeal by the complainant on any portion of this decision.

These recommended findings and conclusions shall not be final until duly signed by the Administrative Judge and sent to the parties. The court reporter shall send the original bench decision transcript to me at my office here in Philadelphia,

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1421 Cherry Street, 6th Floor, Hearings Unit, Philadelphia, PA
19102.

Thank you. This concludes my bench decision.
(The proceedings were concluded at 4:58p.m.)

/s/ Julie Procopiw Todd
11/27/95

APPENDIX "E"

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, DC 20507

William D. Morris,	:	
Appellant	:	Appeal No.01962984
	:	Agency No. DM-92-056
v.	:	EEOC Hearing No. 170-
	:	95-8281X
William S. Cohen,	:	
Secretary, Department	:	
of Defense, (Defense	:	
Logistics Agency),	:	
Agency	:	

DECISION

Appellant timely appealed to the Equal Employment Commission (EEOC) from a final agency decision (FAD) concerning his allegation that the agency violated the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 et seq. The appeal is accepted accordance with the provisions of EEOC Order 960, as amended.

The issue presented is whether the appellant was discrimination against on the basis of a disability (arthritis, degenerative disc disease) when he was denied a permanent light duty position outside of the warehouse between February 27 and October 25, 1992.

At the time of the alleged discrimination, the appellant was employed as a WG-5 Warehouse Worker (Forklift Operator) in the agency's Defense Distribution Region East, Warehousing Division, in New Cumberland, Pennsylvania. He filed the instant EEO complaint in August 1992 when the agency failed to accommodate his requests for a reasonable accommodation starting in February 1992.

After the agency completed the investigation of the complaint, the agency notified the appellant of his right to request a hearing before an EEOC Administrative Judge (AJ). The appellant requested a hearing. After a hearing, the AJ issued a recommended decision on November 27, 1995, finding that the appellant was a qualified individual with a disability; and, that the agency intentionally discriminated against the appellant between February 27 and April 11, 1992, by failing to make any attempts to accommodate his medical restrictions by considering his reassignment to an office job in spite of his repeated requests. However, the AJ found that the agency did not discriminate against the appellant thereafter.

On February 5, 1996, the agency issued a FAD adopting the AJ's finding of no discrimination after April 11, 1992, but rejecting the AJ's finding of intentional discrimination prior to that date. It is from this FAD that the appellant now appeals. Both parties submitted briefs on appeal. The appellant argues for the affirmance of the AJ's findings regarding discrimination between February and April 1992, and urges a reversal of the AJ's finding that the agency did not discriminate against the appellant thereafter. The agency urges an affirmance of the FAD.

After a careful review of the record in its entirety and the parties' submissions on appeal, we find that the AJ's recommended decision sets forth the relevant facts and properly analyzes the appropriate regulations, policies and laws. Based on the evidence of record, we discern no basis to disturb the AJ's findings¹

The AJ found that the agency was aware of the appellant's need for a reasonable accommodation as of February 27, 1992, when the agency's medical officer issued the report of a fitness-for

¹Because we uphold the AJ's recommended decision in its entirety, we find it unnecessary to resolve the appellant's contention that the agency is bound by the AJ's decision under 29 C.F.R. 1614.109(g) because it did not timely issue the FAD. The AJ mailed the decision to the parties on November 27, 1995. Because the agency had moved to a different location, it did not receive the FAD until December 12, 1995. The appellant argues that the agency's February 1996 FAD should be deemed untimely because the agency's delayed receipt of the AJ's decision was due to its failure to inform the AJ of a change of its address.

Although the agency failed to inform the AJ of the change of address, it had submitted a permanent change-of-address order to the Post Office, and the delay in the forwarding of the mail to the agency's new location occurred in the Post office. The agency then issued the FAD on February 5, 1996, within less than 60 days of actually receiving the AJ's decision.

-duty examination concurring with the appellant's own physician's recommendation that the appellant should not work in the warehouse setting where he was required to stand on a concrete floor and work in cold and damp conditions. Among the other restrictions, the appellant was not allowed to lift over twenty pounds. In spite of the medical restrictions that the appellant should not work on the Concrete floor, in a damp and cold warehouse environment, the agency made no attempt to consider reassigning the appellant to any available office position. The AJ found the appellant's testimony credible that he asked his supervisor and the Chief of the Warehousing Division several times between February and April 1992 about a reassignment to an office job, consistent with his medical restrictions. The AJ also found credible the testimony of a management assistant responsible for coordinating the agency's placement actions for employees who needed a reasonable accommodation for disabling conditions. The management assistant testified that the Chief of the Warehousing Division had asked her for assistance in preparing a personnel form for reassigning the appellant. The Chief however did not submit such a request until July 28, 1992. Based on this evidence, the AJ found that the agency failed to make any attempts to reassign the appellant in accordance with his medical restrictions until July 1992. In the meantime, the appellant sustained an on-the-job injury on April 11, 1992, when he lifted an unmarked box weighing about thirty pounds.

Between April 11 and June 8, 1992, the appellant was off duty as a result of the on-the-job injury. He received workers' compensation benefits during this period. When the appellant returned to duty on June 8, 1992, his physician continued several of the appellant's medical restrictions, such as, no walking or standing for long periods and limitations on lifting

heavy weights. However, the physician *did* not indicate that the appellant should be assigned to a job in an office setting. Upon returning to duty on June 8 1992, the appellant was again assigned to work in the warehouse within his then-current medical restrictions. Lastly, as a result of the appellant's continual requests for reassignment to an office job, the agency permanently reassigned the appellant to an office automation clerk position in the EEO office on October 25, 1992.

The AJ found that the agency did not discriminate against the appellant after April 11, 1992. There was no need for an accommodation between April 11 and June 8, 1992, because the appellant was not at work. The AJ found that the agency provided the appellant with an accommodation after June 8, 1992, consistent with his then-current medical restrictions. The AJ rejected the appellant's contention that the agency failed to accommodate him until October 1992 because he was not reassigned to an office position until then. Not only did the June 1992 medical restrictions not require such a reassignment, the AJ also noted that the appellant acknowledged that the light duty assignments after June 8 were not in a cold and damp environment, even though they were located in the warehouse setting.

As remedy, the AJ recommended an award of back pay, with interest, for any work missed by the appellant between February 27 and June 8, 1992;² compensatory damages for any

² Even though the AJ found that the agency did not discriminate against the appellant between April 11 and June 8, 1992, the award of back pay for this period is proper as a remedy for discrimination during the preceding period which caused the appellant to be off duty after April 11, 1992.

loss suffered by the appellant as a result of the April 11, 1992 on-the-job injury, caused by the agency's intentional failure to accommodate him appellant's medical restrictions³; reasonable attorney's fees; and, training in the requirements of the Rehabilitation Act for all responsible management officials.

Accordingly, we AFFIRM the FAD in so far as it adopted the AJ's finding of no discrimination regarding discrimination after April 11, 1992. However, we REVERSE the FAD in so far as it rejected the AJ's finding of discrimination between February 27 and April 11, 1992. The matter is REMANDED for the agency to comply with the terms of the ORDER below.

ORDER

1. Within thirty (30) calendar days of the date this decision becomes final, the agency shall determine the appropriate amount of back pay, interest and other benefits due appellant, for any work missed by the appellant between February 27 and

³ Compensatory damages may be awarded pursuant to 42 U.S.C. 1981a (a) (3) where an agency fails to demonstrate that it made "good faith efforts, in consultation with the person with the disability who has informed the [agency] that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause undue hardship on the operation of [its] business." The agency's failure to make any attempts to find an available office position for the appellant, in spite of his repeated requests, supports the AJ's award of compensatory damages for any losses the appellant may be able to establish on remand.

June 8, 1992, because of the agency's failure to accommodate the appellant's medical restrictions, pursuant to 29 C.F.R. §1614.501. The appellant shall cooperate in the agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the agency shall issue a check to the appellant for the undisputed amount within thirty (30) calendar days of the date the agency determines the amount it believes to be due. The appellant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

2. Within ten (10) calendar days of the date this decision becomes final, the agency shall give the appellant a notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993)) in support of his claim for compensatory damages within forty-five (45) calendar days of the date the appellant receives the agency's notice. The agency shall complete the investigation on the claim for compensatory damages within seventy-five (75) calendar days of the date this decision becomes final. Thereafter, the agency shall process the claim in accordance with 29 C.F.R. 1614.108 (f) .

3. Within sixty (60) calendar days of the date this decision becomes final, the agency shall provide training to all responsible management officials in the requirements of the Rehabilitation Act of 1973 regarding their obligation to provide a reasonable accommodation to an employee with a disability. Documentation evidencing completion of such training shall be

submitted to the Compliance Officer within thirty (30) calendar days thereafter.

4. The agency shall post at the Defense Distribution Region East, Warehousing Division, New Cumberland Pennsylvania, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer within ten (10) calendar days of the expiration of the posting period.

5. The agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation.

ATTORNEY'S FEES (HI092)

If appellant has been represented by an attorney (as defined by 29 C.F.R. §1614.501 (e) (1) (iii)), he/she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. §1614.501 (e). The award of attorney's fees shall be paid by the agency. The attorney shall submit a verified statement of fees to the agency -- not to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision

becoming final. The agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. §1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION
(KD595)

Compliance with the commission's corrective action is mandatory. The agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the appellant. If the agency does not comply with the Commission's order, the appellant may petition the Commission for enforcement of the order. 29 C.F.R. §1614.503 (a). The appellant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§1614.408, 1614.409, and 1614.503 (g). Alternatively, the appellant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§ 1614.408 and 1614.409. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. §2000e-16(c) (Supp. V 1993). If the appellant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. §1614.410.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (MO795)

The Commission may, in its discretion, reconsider the decision in this case if the appellant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued; or
2. The previous decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy; or
3. The decision is of such exceptional nature as to have substantial precedential implications.

Requests to reconsider, with supporting arguments or evidence, **MUST BE FILED WITHIN THIRTY(30) CALENDAR DAYS** of the date you receive this decision, or **WITHIN TWENTY (20) CALENDAR DAYS** of the date you receive a timely request to reconsider filed by another party. Any argument in opposition to the request to reconsider or cross request to reconsider **MUST** be submitted to the Commission and to the requesting party **WITHIN TWENTY (20) CALENDAR DAYS** of the date you receive the request to reconsider. See 29 C.F.R. § 1614.407. All requests and arguments must bear proof of postmark and be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed

filed on the date it is received by the Commission.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely. If extenuating circumstances have prevented the timely filing of a request for reconsideration, a written statement setting forth the circumstances which caused the delay and any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

RIGHT TO FILE A CIVIL ACTION (T0993)

This decision affirms the agency's final decision in part, but it also requires the agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court on both that portion of your complaint which the Commission has affirmed AND that portion of the complaint which has been remanded for continued administrative processing. It is the position of the Commission that you have the right to file a civil action in an appropriate United States District Court WITHIN NINETY (90) CALENDAR DAYS from the date that you receive this decision. You should be aware, however, that courts in some jurisdictions have interpreted the Civil Rights Act of 1991 in a manner suggesting that a civil action must be filed WITHIN THIRTY (30) CALENDAR DAYS from the date that you receive this decision. To ensure that your civil action is considered timely, you are advised to file it WITHIN THIRTY (30) CALENDAR DAYS from the date that you receive this decision or to consult

an attorney concerning the applicable time period in the jurisdiction in which your action would be filed. In the alternative, you may file a civil action AFTER ONE HUNDRED EIGHTY (180) CALENDARS DAYS of the date you filed your complaint with the agency, or filed your appeal with the Commission. If you file a civil action, YOU MUST NAME AS THE DEFENDANT IN THE COMPLAINT THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD, IDENTIFYING THAT PERSON BY HIS OR HER FULL NAME AND OFFICIAL TITLE. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (ZIO92)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§791, 794 (c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

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FOR THE COMMISSION:

10/1/98

/sFrances M. Hart

Frances M. Hart

Executive Officer

Executive Secretariat

US EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Washington, D.C. 20507

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
An Agency of the United States Government

This Notice is posted pursuant to an Order by the United States Equal Employment Opportunity Commission ("EEOC") dated _____ which found that a violation of the Rehabilitation Act of 1973, 29U.S.C. 791 et seq, has occurred at the Department of Defense, Defense Logistics Agency, Defense Distribution Region East, Warehousing Division, New Cumberland, Pennsylvania (hereinafter "DDRE").

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or PHYSICAL or MENTAL DISABILITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The DDRE supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The DDRE has been found to have denied a reasonable accommodation to an employee with a disability (arthritis/degenerative disc disease) by failing to timely reassign him

from a warehousing job to an office job. As a result, the agency has been ordered by the EEOC to award the employee back pay for any missed work opportunities, and award appropriate compensatory damages and attorney's fees to the employee. Further, the agency has been ordered to provide training in the requirements of the Rehabilitation Act to the responsible management officials at the DDRE who were responsible for engaging in discrimination. The DDRE will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the requirements of all Federal equal employment opportunity laws and will not retaliate against employees who file EEO complaints.

The DDRE will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

Date Posted: _____

Posting Expires: _____

29 C.P.R. Part 1614 _____

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APPENDIX "F"

US EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Office of Federal Operations.
PO Box 19848
Washington, DC 20036

William D. Morris,
Complainant,

v.

William S. Cohen,
Secretary,
Department of Defense,
(Defense Logistics Agency),
Agency

Request No. 05990139

Appeal No. 01962984
Agency No. DM-92-056
Hearing No. 170-95-8281X

DENIAL OF REQUEST FOR RECONSIDERATION

The agency initiated a request to the Equal Employment Opportunity Commission (EEOC or Commission) to reconsider the decision in William D. Morris v. Department of Defense (Defense Logistics Agency), EEOC Appeal No. 01962984

(October 1, 1998).¹ EEOC Regulations provide that the Commission may, in its discretion, reconsider any previous Commission decision where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. *See* 64 Fed. Reg. 37,644, 37,659 (1999) (to be codified and hereinafter referred to as 29 C.F.R. §1614.405(b)). The agency's request is denied.

However, based upon review of the record, the Commission finds that the previous decision's order should be modified. The previous decision awarded complainant back pay between February 27, 1992 and June 8, 1992. The record indicates that complainant was off duty from April 11, 1992 through June 8, 1992, due to an on-the-job-injury and received workers' compensation benefits. Furthermore, the EEOC Administrative Judge determined and the previous decision affirmed that the agency did not discriminate against complainant during this relevant time period because complainant was not at work. Accordingly, we find that the previous decision's Order should be modified and the agency shall determine the appropriate

¹ On November 9, 1999, revised regulations governing the EEOC's federal sector complaint process went into effect. These regulations apply to all federal sector EEO complaints pending at any stage in the administrative process. Consequently, the Commission will apply the revised regulations found at 64 Fed. Reg. 37,644 (1999), where applicable, in deciding the present appeal. The regulations, as amended, may also be found at the Commission's website at www.eeoc.gov.

amount of back pay, interest, and other benefits due complainant, for any work missed by complainant between February 27, 1992 and April 10, 1992, rather than between February 27, 1992 and June 8, 1992.

After a review of the agency's request for reconsideration, the previous decision, and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(b), and it is the decision of the Commission to deny the request. The decision in EEOC Appeal No. 01962984 is modified as discussed herein. There is no further right of administrative appeal on the decision of the Commission on this request for reconsideration.

ORDER

1. Within thirty (30) calendar days of the date this decision becomes final, the agency shall determine the appropriate amount of backpay, interest and other benefits due complainant, for any work missed by the complainant between February 27, 1992 and April 10, 1992, because of the agency's failure to accommodate the complainant's medical restrictions, pursuant to 29 C.F.R. §1614.501. Complainant shall cooperate in the agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the agency. If there is a dispute regarding the exact amount of backpay and/or benefits, the agency shall issue a check to complainant for the undisputed amount within thirty (30) calendar days of the date the agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the

Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

2. Within ten (10) calendar days of the date this decision becomes final, the agency shall give complainant a notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993) in support of his claim for compensatory damages within forty-five (45) calendar days of the date complainant receives the agency's notice. The agency shall complete the investigation on the claim for compensatory damages within seventy-five (75) calendar days of the date this decision becomes final. Thereafter, the agency shall process the claim in accordance with 29 C.F.R. 1614.108(f).

3. Within sixty (60) calendar days of the date this decision becomes final, the agency shall provide training to all responsible management officials in the requirements of the Rehabilitation Act of 1973 regarding their obligation to provide a reasonable accommodation to an employee with a disability. Documentation evidencing completion of such training shall be submitted to the Compliance Officer within thirty (30) calendar days thereafter.

4. The agency shall post at the Defense Distribution Region East, Warehousing Division, New Cumberland, Pennsylvania, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The agency shall take reasonable steps to ensure that said notices

are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer within ten (10) calendar days of the expiration of the posting period.

5. The agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation.

POSTING ORDER (GJO92)

The agency is ORDERED to post at its Defense Distribution Region East, Warehousing Division, New Cumberland, Pennsylvania, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

ATTORNEY'S FEES (H1199)

If complainant has been represented by an attorney (as defined by 64 Fed. Reg. 37,644, 37,659-60 (1999) (to be codified and hereinafter referred to as 29 C.F.R. § 1614.501(e)(1)(iii)), he/she

is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the agency. The attorney shall submit a verified statement of fees to the agency-not to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision becoming final. The agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

COMPLAINANTS' RIGHT TO FILE A CIVIL ACTION
(Q0400)

This decision affirms the agency's final decision/action in part, but it also requires the agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court WITHIN NINETY (90) CALENDAR DAYS from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed AND that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action AFTER ONE HUNDRED AND EIGHTY (180) CALENDAR DAYS of the date you filed your complaint with the agency, or filed your appeal with the Commission. If you file a civil action, YOU MUST NAME AS THE DEFENDANT IN THE COMPLAINT THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD, IDENTIFYING THAT PERSON BY HIS OR HER FULL NAME AND OFFICIAL TITLE. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the National organization, and not the local office, facility or department in which you

work. Filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

/s/ Carlton M. Hadden

Carlton M. Hadden, Director
Office of Federal Operations

SEP 13 2000

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to complainant, complainant's representative (if applicable), and the agency on:

F-8

SEP 13 2000

Date

/s/ Joni G. Barnes

Joni G. Barnes

Equal Opportunity Assistant

US. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, D.C. 20507

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
An Agency of the United States Government

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Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or PHYSICAL or MENTAL DISABILITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment. The DDRE supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The DDRE has been found to have denied a reasonable accommodation to an employee with a disability by failing to timely reassign him from a warehousing job to an office job. As a result, the agency has been ordered by the EEOC to award the employee backpay for any missed work opportunities, and

award appropriate compensatory damages and attorney's fees to the employee. Further, the agency has been ordered to provide training in the requirements of the Rehabilitation Act to the responsible management officials at the DDRE who were responsible for engaging in discrimination. The DDRE will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the requirements of all Federal equal employment opportunity laws and will not retaliate against employees who file EEO complaints.

The DDRE will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

Date Posted: _____

Posting Expires: _____

29 C.F.R. Part 1614 _____